November 8, 2013

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	

NOTICE OF PROPOSED RULEMAKING

Reply Comments of the Montana Telecommunications Association

The Montana Telecommunications Association (MTA) is pleased to submit these reply comments in response to the Federal Communications Commission's (Commission) proposed reforms to the universal service Schools and Libraries Program (E-rate). MTA's reply comments respond to several common themes expressed by a broad spectrum of E-rate stakeholders. These themes are:

- The Commission's proposed E-rate reforms must take place within the Schools and Libraries Program's current budget and not divert scarce resources from other universal service programs;
- E-rate support, and related reforms, must be based on accurate, reliable data;
- Since the vast majority of our nation's schools and libraries have access today to high-capacity broadband facilities, E-rate funds should focus on affordability—not availability (i.e., deployment)—of broadband services;
- Speed benchmarks should be aspirational, tailored to specific circumstances, and flexible; they should not comprise a one-size-fits all mandate;
- E-rate funds should not support deployment of network facilities or other non-educational functions. Such support merely reduces support otherwise available to achieve E-rate's primary purpose: to enhance affordability of advanced telecom services for schools and libraries. If E-

rate support is necessary where connectivity is totally unavailable, such support should be subject to strict safeguards and should leverage existing telecommunications infrastructure to the maximum extent possible;

- E-rate funding should coordinate with other programs designed to support broadband connectivity; and,
- The 6th Report and Order's gift ban needs to be modified to encourage philanthropy.

The Commission Must Retain Current Budgetary Constraints on the E-Rate Program Funds

Some comments, particularly those of parties representing schools and libraries, urge the Commission to increase the size of the E-rate fund by as much as 100 percent.[1] They argue primarily that demand for E-rate support exceeds the amount of funds available in the E-rate account.

The E-rate is not the only program in which demand exceeds the supply of limited fiscal resources. Both Congress and the Commission have indicated a strong interest in keeping the federal universal service fund (USF) roughly at its current size of approximately $8.5 billion. Every program funded by the USF—with the notable exception of the Lifeline Program—is operated within a program budget. The High-Cost Fund (including Connect America Fund—CAF) and the Healthcare Connect Fund are effectively capped at $4.5 billion and $400 million respectively, and the Schools and Libraries Fund (E-rate) is adjusted annually for inflation. Currently the E-rate Fund stands at $2.36 billion.

As many comments point out, the proposed reforms alone (notwithstanding proposals to increase the size of the E-rate fund to meet projected demand) threaten to increase the size of the E-rate fund substantially.

[1] For example, the National Education Association (NEA) recommends that the Commission permanently double the program cap, given a $5.2 billion FY12 funding demand.

For example, the National Association of State Utility Consumer Advocates (NASUCA)

> recognizes—as must the FCC—that increasing the size and scope of the E-rate program will increase the size of the federal Universal Service Fund. Thus, under the current rules, the burden on customers of funding this program will increase, in an environment where the strain of supporting the federal fund is already increasing. (NASUCA, 2, 3)[2]

If the total size of the USF is limited at around $8.5 billion, then any growth of one fund, e.g., E-rate, will come from "savings" or other reductions extracted either from E-rate funding or other programs (e.g., High-Cost, including CAF; Healthcare Connect or Lifeline). MTA and others oppose raiding one fund to pay for another fund's growth.

> [F]unds for e-rate expansion should not come from other USF programs. If there are legitimate savings to be achieved from other parts of the USF—such as high-cost or Lifeline—they should either be used to reduce the USF contribution factor or be pumped back into those programs…These savings should not be diverted to E-rate. (NASUCA, 4.)

The High-Cost/CAF fund, for example, already is subject to considerable uncertainty and unpredictability as the result of recent program reforms. Additional uncertainty resulting from reforms of the E-rate that could spill over into the High Cost fund would exacerbate an already tenuous situation that is imperiling investment in rural broadband infrastructure.

NTCA—The Rural Broadband Association, and the Western Telecommunications Alliance (NTCA/WTA), among others, point out that E-rate reforms should not come at the expense of other universal service programs.

> each component of the USF must be viewed as important and should be sized based on a realistic assessment of the program's challenges and goals…[P]itting one program against the others would undermine the much-needed effort to ensure that all Americans have sustainable and

[2] NASUCA also notes that "the Commission is considering a significant expansion of the E-rate portion of the USF/CAF," while the contribution base continues its "five-year decline." NASUCA recommends that "the contribution base must be expanded to ensure that the providers who benefit from the USF/CAF also help support the funds." (NASUCA, 3-4) MTA and many others have long urged the Commission to undertake proceedings to expand the contribution base.

affordable access to high-quality communications services." (NTCA/WTA, 5)

Moreover, as discussed below, any savings generated by proposed E-rate modernization reforms, should be directed toward making broadband services more affordable for those schools and libraries least able to afford high-capacity broadband services and not diverted to fund unnecessary facilities deployment.

> Given limited funding, the Commission's original rationale for excluding from priority service the costs of modulating electronics to light dark fiber networks and 'special construction charges' on those networks should remain in effect." (Communications Workers of America--CWA, 4)[3]

Allocation of E-rate Funds Must Be Based on Data-driven Analysis

Assertions about lack of sufficient broadband speed often are based on voluntary speed tests and other self-reported, crowd-sourced "surveys" which are notoriously inaccurate and misleading.[4] Such unscientific data becomes harmful if used as the basis for formulating public policy that ultimately may lead to displacement of private jobs and investment.

As the Commission knows, self-reported, crowd-sourced findings regarding broadband speeds or access to broadband facilities are subject to a host of errors and omissions.[5] For example, respondents of self-reported surveys frequently do not know what broadband data speeds they receive or even what facilities or bandwidth to which they may be connected. In Montana, MTA has found that anchor institutions frequently unwittingly misreport both the broadband speeds they currently receive and/or the speeds they *could* receive

[3] See also: CenturyLink. Rules prohibiting "E-rate discounts to acquire unneeded capacity or warehouse dark fiber for future use" should be retained.
[4] See CWA at 2, citing the Commission's "2010 survey of E-rate funded schools and libraries, only 10% reported broadband speeds of 100 Mbps or greater, while 48 percent reported speeds of less than 10Mbps. About 39% of respondents cited cost of service and 27% cited cost of installation as a barrier. The American Library Association (ALA) annual survey found that only 9% of libraries reported connections speeds greater than 100Mbps, and 25% of libraries still have speeds of 1.5 Mbps.
[5] See *ex parte* comments of Neal Goldberg, National Cable & Telecommunications Association (NCTA). GN Docket No. 09-51. March 26, 2010. NCTA details the limitations of online speed test data.

upon request. For example, several anchor institutions have self-reported that they lack adequate bandwidth, when in fact they receive 10 Mbps, and frequently can receive even more. Moreover, some entities may report that they receive "lower" bandwidth speeds not as the result of network capacity or availability, but as the result of the broadband tier to which they subscribe. Of course, it is important to point out that these institutions may be subscribing to lower-tier bandwidth service because they cannot afford to pay for higher-capacity connections—*precisely the issue that the E-rate is indented to address*.

As for speed tests themselves, if an entity subscribes to 1.5 Mbps (or 10 Mbps, or whatever bandwidth) a speed test run by that entity will reflect what the entity subscribes to, at best, and not what is available. Speed tests are subject to a host of additional factors that will taint results. For example, on-site hardware or software can skew results. Viruses, old software or hardware, etc. can slow Internet speeds. A speed test therefore would not accurately depict what actual speeds are available to a site. And then there are many bottlenecks off site as well. An end user may receive 100 Mbps from its provider, but a speed test may transport a signal from the end user or provider through many "hops," any number of which could form bottlenecks along the way. Since a speed test will max out at the slowest speed between the end user and the location of the speed test, an entity with a 100 Mbps connection from its provider may receive much lower reading from a speed test. Relying on speed test data as the basis of allocating E-rate funds therefore is ill-advised at best.

Speed tests are not the only unreliable source of capacity/usage data. As CenturyLink notes,

> [The] National Broadband Map is not a wholly reliable indicator of where broadband services or facilities are available…[T]he map is focused on mass market retail services, and even there it is always lagging actual deployment…[T]he map tells nothing about who is willing to deploy…services to a particular school or library… (CenturyLink, 2)

Thus, it is critical that any commitment of E-rate funds be based on actual availability. If a school or library, or any end user, determines it needs 100 Mbps of bandwidth capacity (see discussion of speed benchmarks, below), but it "finds"

that it "receives" only 10 Mbps of bandwidth without an accurate verification of what is actually available, it would be a gargantuan waste of resources to conclude that the school or library therefore needs to spend E-rate funds building network facilities when in fact all it needs to do is increase the amount of bandwidth which *currently is available* from its broadband provider.

In summary, accurate, reliable data must be developed before making any commitment of E-Rate funds to support access to bandwidth. As the National Education Association (NEA) points out, it is essential to gather "meaningful data."

> [T]o date, the data available to inform policy decisions…has not been sufficiently comprehensive. (NEA, 12)

Or, as CTIA—The Wireless Association urges,

> Before the Commission can consider the adequacy of current E-rate funding levels, the Commission should collect additional information about schools' and libraries' broadband needs and current ability to obtain those services. (CTIA, 2)

NASUCA concurs, stating that the

> FCC must collect wireline and wireless broadband deployment data on the services that schools have available to them today…FCC must first start with reforming data collection…so sound public policy decisions can be made as to the most effective way to ensure the schools and students who do not currently have access to high capacity broadband are given priority to E-rate funding. (NASUCA, 10-11)

MTA urges the Commission to gather accurate, reliable data that enable the Commission to gain a real-world picture not only of what is currently being *used* by schools and libraries (and other anchor institutions) but what is *available* to anchor institutions upon reasonable request. As recommended by NTCA/WTA,

> The Commission should work closely with anchor institutions and local broadband service providers to assess what current demand is, what drivers affect current demand (prices versus need), determine what applications and usage scenarios the institution plans on implementing in the future and what speeds are needed for those specific uses. (NTCA/WTA, 21)

E-Rate Support Must Focus on Affordability, Not Availability

NTCA—The Rural Broadband Association, and WTA surveyed broadband provider/members and found, unsurprisingly, that the overwhelming majority of anchor institutions served by rural telecom providers already has access to high-capacity broadband services.[6] By and large, the issue for the E-rate is how best to support *affordability* of broadband services by our nation's schools and libraries (and other anchor institutions). It is not about how to deploy broadband telecommunications infrastructure (i.e., *availability*).[7]

Specifically, NTCA/WTA found that 75 percent of the 1,208 schools in survey respondents' study areas already are connected with fiber connections to the premise (FTTP); another 11 percent have fiber connections to the node (FTTN); and only 5 percent were not connected to the network, although it is quite possible that they could be served by another provider. Respondents reported maximum connection speeds of 912 Mbps (mean); 100 Mbps (median); and average speeds of 128 Mbps (mean) and 20 Mbps (median). (WTA/NTCA, 13.)

These statistics generally reflect the broadband landscape in Montana, as well. MTA notes further that a portion of the "unconnected" schools and libraries *chooses* not to connect to the Internet for religious or cultural reasons—even though high capacity access is available to them.

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[6] See also testimony of David Cohen, Executive Vice President of Comcast Corporation, citing data from the National Cable and Telecommunications Association (NCTA). www.ncta.com/industry-data. "[O]ver 85 of Americans have access to networks capable of delivering speeds of 100 Mbps and higher…[C]urrent speed data from Akamai shows that, if US. States were ranked against countries worldwide, six of the top ten areas in the world with respect to average connection speed would be U.S. states." www.akamai.com/dl/documents/akamai_soti_q213.pdf?WT.mc_id=soti_Q213. Before the U.S. Senate Committee on Commerce, Science and Transportation, Subcommittee on Communications, Technology and the Internet. October 29, 2013.

[7] A recent report form the Economist Intelligence Unit suggests "redefining the digital divide" to focus on "the willingness and ability of citizens to use [broadband] for productive purposes." According to the report, affordability remains a key obstacle to Internet adoption. Andrew Burger, "Report: Refocusing Needed to Bridge the Digital Divide." Telecompetitor.com. November 7, 2013.

NTCA/WTA distinguish between *Affordability* and *Availability*. Availability is broken down further between "partial" availability" (facilities are reasonably available but for last mile connection) and "total unavailability" (no access and no construction planned or underway, requiring a "new build"). MTA concurs with NTCA/WTA's assertion that

> if one simply treats every school as faced with an Availability problem and thereby allows (or even encourages), for example, consortia to obtain dark fiber or other facilities to 'wire' every school (even if some are already fully connected by fiber), the costs…could be significant…and would leave little, if any, E-Rate support left to address Affordability. (NTCA/WTA, 9.)

As noted above, it is essential that the Commission first gather data necessary to determine accurately whether there is an affordability or an accessibility issue. In the vast majority of cases, the issue is affordability. And that is the principal priority of E-rate support.

Speed Benchmarks Should Be Tailored to Specific Circumstances with Flexible—Not Mandatory—Goals

Many parties have cautioned against adopting arbitrary, mandatory bandwidth speed benchmarks. As discussed above, it is critical that the Commission first gather sufficient data on which to base its decisions. Such data should not only determine *availability* vs. *affordability* of high-capacity broadband services, but it should determine what schools and libraries *need* today and going forward. A benchmark of 100 Mbps per 1,000 students may be appropriate in some cases, but not all. To support an across-the-board, one-size-fits-all benchmark for all schools and libraries—before schools and libraries can justify such speed benchmarks—would unnecessarily divert scarce E-rate funds from purposes for which they may better be put to use. As NTCA/WTA, among others, point out,

> broadband speed targets…that are not yet in demand and not affordable for the schools, risk artificially and inefficiently exhausting limited E-Rate funds, thereby undermining the goal of providing sufficient access to the largest number of schools and libraries." (NTCA/WTA, fn 7)

The Commission, not to mention states and local school districts, needs first to determine what is needed by individual schools and libraries. Then, E-rate support may be justified in making affordable the bandwidth capacity that each school and library may need to meet its specific demand. The State Educational Technology Directors Association (SETDA) concurs.

> states should be required to either ratify the national K-12 connectivity target established by the Commission or set an alternate state-specific target *based on a rigorous analysis and consideration of school connectivity needs and trends* [including] an assessment of the gap between current school connectivity and the state's adopted targets..." (SETDA, 17) Emphasis added.

As noted above, the vast majority of schools and libraries and other anchor institutions has access to high-capacity bandwidth. In Montana, there is only a handful of schools with more than 1,000 students. In fact, most schools have only a few hundred, and often fewer, students. If the Commission's benchmark target of 100 Mbps per 1,000 students were proportional, then a benchmark of 10 Mbps would apply to a school with 100 students, a goal which is already met by most schools and their providers today. To reiterate a point made earlier, accessibility is not a problem with these and almost all other schools in Montana. However, even a school with 100 students may not need 10 Mbps. In short,

> speed goals should be "aspirational and non-prescriptive to avoid an unobtainable and unmanageable one-size-fits-all target that could strain already stretched budgets of educational institutions. (NTCA/WTA, 19)

The National Education Association (NEA) recommends flexibility in setting broadband goals.[8]

> bandwidth metrics "should be targets and not mandates…imposition of such metrics as mandates could lead to inefficiencies and investment in unused capacity. (NEA, 6)

[8] NEA further urges the Commission to avoid one-size-fits-all mandates for all E-rate supported activities—not just bandwidth targets. For example, NEA "opposes district-wide applications." Consortia can be encouraged, but there needs to be flexibility. Averaging schools in a district may undercompensate those in greatest need and/or overcompensate those "that would otherwise not qualify." (NEA, 10-11)

E-rate Funds Should Not Support Network Construction Or Other Non-educational Functions Except Where Connectivity Is Totally Unavailable, Subject to Strict Safeguards, and Must Leverage Existing Infrastructure

Some commenters urge the Commission to equalize the treatment of dark and lit fiber, or to use E-rate support to fund network expansion, including for non-educational purposes. For example, the State E-Rate Coordinators Alliance (SECA) comments that without E-rate support for equipment needed to light dark fiber,

> dark fiber *service* may not be nearly as economically attractive to applicants as a leased lit fiber solution even though the total cost of the dark fiber solutions is more cost-effective than the lit fiber solution." (SECA, 18.) (See also comments of the National Association of Telecommunications Officers and Advisors--NATOA) Emphasis added.

First, as USTelecom points out, dark fiber is neither a telecommunications nor an information *service*. It's a facility.

> USTelecom has commented at length as to why dark fiber is not eligible for support under section 254(h)(1)(A) or (h)(2)(A) of the Act as it is neither a telecommunications service, advanced telecommunications service nor an information service. Rather it is merely a facility that has the potential to be used as part of a service when and if it is lit. As such, it cannot be included in the permissible uses of E-Rate Program funding and thus the Commission should not provide…support for the modulating electronics necessary to light leased dark fiber." (USTelecom, 15-16)

Second, as SECA itself notes, dark fiber is not as "economically attractive" as leased lit fiber. So why would the Commission waste scarce E-rate funds on a facility that is not authorized by the Act and which is economically unjustified?

If schools and libraries choose to use their funds (taxpayer resources) to build redundant telecommunications network facilities, either for their own purposes or for non-educational purposes, they are free to do so—subject, presumably, to the will of the taxpayers who would be called upon to underwrite such public expenditures. However, the Commission should not condone the use of E-rate funds for such questionable endeavors, especially given the

demand for E-rate funds for higher priority uses, primarily to ensure *affordable access* to *telecommunications services* to schools and libraries for *educational purposes*.[9]

In addition to diverting E-rate funds from higher priority uses, funding construction of redundant network facilities causes a number of additional, negative economic consequences. CenturyLink, among others, summarizes the danger of publicly-funded redundant network facilities, whether through E-rate funding or other publicly-funded duplication of effort.

> publicly owned or operated facilities undermine competition by introducing nonmarket pricing, subsidizing their operations by tax-payers, and taking traffic and revenue opportunities from tax-paying private operators. Municipal or public owned systems also have a very poor track record, for cost effectiveness, quality of service, and reliability…one of their effects is to discourage private broadband network investment…especially in areas that are marginal for broadband investment even with high cost support. (CenturyLink, 16)

Again, support for dark or lit fiber, hotspots, wide area networks (WANs) and other network facilities merely reduces support otherwise available to achieve E-rate's primary purpose. As NTCA/WTA state

> adopting sweeping, ill-fitting, 'one-size-fits-all' changes that permit, for example, use of dark fiber and wide-area network solutions across broad geographies and among consortia of schools and libraries—many of which may already have robust connections in place individually—runs the risk of depleting valuable E-Rate resources, undermining the ability of schools that already have robust connections to receive ongoing support needed to pay for those in a world of limited 'budgets,' and 'cannibalizing' other federal programs that may have enabled such robust connections to already be put into place and are still playing a role in keeping those connections up-to-date and affordable. (NTCA/WTA, 6-7)

As noted above, the overwhelming majority of schools and libraries have access to advanced, high-capacity broadband telecommunications services today. In limited circumstances where facilities are totally unavailable, use of E-rate funding may be justified, subject to strict safeguards to protect consumers against wasteful spending of scarce E-rates funds. If the Commission adopts a

[9] 47 U.S.C. §254(h)(1)(B).

policy that allows use of E-rate funds to support network deployment, MTA urges the Commission to adopt the safeguards proposed by NTCA/WTA, which include:

- Robust public challenge process, including demonstration that no alternative service exists;
- Demonstration of ability to deliver service over the long term;
- Meaningful matching fund requirements;
- Prohibition against using revenues from excess capacity as a source of matching funds. (NTCA/WTA, 17)

NTCA/WTA also urge the Commission to limit construction funds to no more than $100 million.

MTA additionally urges the Commission to prohibit the sale of excess capacity, either on a wholesale or retail basis.[10] Any construction of telecommunications infrastructure must be based on a determination that such construction is the least-cost option, and include an analysis of total long run costs of construction, operation and maintenance (including upgrades).

As SECA recommends,

> [T]he Commission [should] perform a cost analysis [that] must include the total cost of ownership, including all (i.e., capital) costs and ongoing costs too." (SECA, 19)

Except in the small minority of circumstances when it is *reliably demonstrated* that access to sufficient broadband facilities/infrastructure is an impediment to school or library connectivity, NTCA/WTA further urge the Commission

> by rule [to] prohibit…the use of E-Rate funds to support capital expenditures associated with new <u>outside plant</u> infrastructure deployment in any area where BTOP, BIP, other RUS financing programs, and High-Cost USF (including but not limited to CAF) already support or facilitate the deployment and/or sustainability of network deployments today." (NTCA/WTA, 14.)

[10] 47 U.S.C. §254(h)(3). Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.

MTA agrees. Conversely, MTA opposes those who would use scarce E-rate funds to support lighting or building dark fiber facilities, wide area networks (especially for non-educational purposes), Wi-Fi hotspots and other facilities-based support when existing telecommunications infrastructure and services are available. NTCA/WTA recommend

> rather than permitting individual schools and libraries (or consortia of such [Community Anchor Institutions]) to utilize WAN or dark fiber infrastructure deployment options to bypass robust connections that already exist, the Commission should take great care to ensure that E-Rate funds are not siphoned away from those schools and libraries that need them to address Affordability." (NTCA/WTA, fn 13)

In short, the Commission must avoid mission creep, which subjects the E-rate to ever-expanding goals and diverts resources from their primary statutory purpose.

E-rate Funding Should Be Coordinated with Other Programs Designed to Support Broadband Connectivity

NTCA/WTA urge the Commission not only to leverage existing network *facilities* wherever possible, but to apply the same leverage principle to existing *programs* that are aimed at enhancing access to the broadband ecosystem by anchor institutions.

> By coordinating among…federal initiatives and leveraging existing networks to the greatest extent possible, the Commission can maximize the use of scarce E-Rate resources and get the most 'bang for the buck'…" (NTCA/WTA, 5)

As the Commission knows, several programs—besides those comprising the federal universal service fund—support deployment and utilization of broadband facilities for anchor institutions, and other business and residential consumers. The Commission must use extreme caution when committing scarce resources to fund services or facilities that other programs already support.

> The failure to leverage existing assets that have been deployed in connection with and/or are currently supported through federal programs such as BTOP, BIP, other RUS financing programs and High-Cost universal service support would introduce any number of troubling

> consequences [such as] wasteful and inefficient 'overbuilding'—including the troubling potential for *two* connections supported specifically by USF (one pre-existing via High-Cost and a new redundant facility via E-Rate) going to the same rural institution…[T]he failure to leverage existing assets would exhaust limited E-Rate funds that could be better spent on keeping services affordable, permitting installation of internal connections where needed, or address[ing] the limited circumstances of true and total unavailability…Moreover, [failure to leverage existing assets] could introduce new pressures as a result of 'cherry-picking'…high-value anchor institutions…leaving the most costly-to-serve portions to the carrier of last resort and thus ironically increasing reliance upon (and demand for) High-Cost USF support through E-Rate reform [and placing] upward pressure on end-user rates...." (NTCA/WTA, 11-12)

Similarly, the National Association of State Chief Information Officers (NASCIO) urges the commission to develop a

> process that allows states to choose to collaborate with the FCC in planning and providing priority funding at the state's discretion…to ensure that state and federal projects are supportive rather than redundant…" (NASCIO, 2)

The Communications Workers of America (CWA) encourage the Commission to use E-rate and High-Cost/CAF in a complementary, not conflicting manner.

> It may be possible to link E-rate support with the CAF program to lower the cost of deployment in unserved and underserved communities, thereby improving the economics of broadband and making more efficient use of universal service funds." (CWA, 6)

Similarly, SECA

> strongly advocates…leveraging CAF Funds to defray the payment of non-recurring installation costs for broadband services to be provided to customers located in rural areas of the country for which CAF funds are being allocated in order to pay for broadband infrastructure build out. (SECA, 15)

The 6th Report and Order's (R&O) Gift Ban Rule Needs to Be Modified to Encourage Philanthropy

MTA is not alone in expressing its concerns about the negative effects of the 6th R&O gift ban.[11]

The rules have curtailed philanthropic activity intended to benefit schools, students and communities that, with few exceptions, have limited resources to pay for the items that donations and sponsorships make possible. Schools are critical to the sustainability of rural communities. Rural telecommunications providers are actively engaged in the communities they serve through the provision of advanced telecom services that enable commercial, entertainment, educational, health care, emergency and other services vital to a community's economic vitality. These companies often are among the largest employers and drivers of economic development in the communities in which they operate. They are delighted to support their employees, their neighbors, and their communities, which include the schools that their children attend.

Rural telecom providers often are asked to help support a wide variety of charitable causes. They may provide jerseys or scoreboards, among other things, for school athletic teams; or they may donate equipment or supplies, or sponsor events—all of which are intended to support schools and enhance the quality of life in communities they serve.

The gift ban, however, puts a pall over such activity. Companies are reluctant to provide, and schools are reluctant to request or receive, donations contributions or sponsorships that come with no strings attached. Moreover, as MTA has informed the Commission, not only are charitable activities threatened

[11] CC Docket No. 02-06. MTA/WITA *ex parte*, May 4, 2011; Verizon *ex parte*, July 11, 2013. See also "Request for Guidance on Rules Governing Gifts in the E-rate Program," Universal Service Administrative Company (USAC). August 5, 2011. USAC requests clarification on when equipment may be considered an acceptable charitable donation, and when is a widely attended gathering—such as an education conference—considered acceptable to sponsor or attend. See also, guidance request, August 22, 2011, from E-Rate Central. (The Commission has not responded to these guidance requests.)

by uncertainty caused by the gift ban, but the ban also creates potential conflict with Montana statute.

> …state statute…requires cooperatives to donate unclaimed capital credits for educational purposes. The most relevant and effective contributions are for services or technology related to distance education, both because distance learning can enhance education quality and increase efficiencies of rural schools and because rural schools rarely can afford distance learning technology. However, the gift ban has put a stop to such constructive contribution practices. (CC Docket 02-06. *Ex parte* notice of MTA and Washington Independent Telecommunications Association. May 4, 2011.)

Verizon more recently expressed concern to the Commission about the effects of the gift ban.

> [T]he Verizon Foundation Innovative Learning Schools program… complements E-rate and…could be expanded but sometimes faces challenge with respect to the E-rate gift rules. (Verizon *ex parte* notice. CC Docket No. 02-06. July 11, 2013)

MTA reiterates recommendations it has made in the past. That is, the gift ban should be modified to:

- Allow potential vendors to sponsor widely attended gatherings, events, conventions, conferences, etc.;
- Allow potential vendors to provide *institutional* sponsorships or donations (i.e., not *people*—e.g., teachers, administrators);
- Disclose sponsorships, donations, etc. on a USAC Schools and Libraries program web site; and,
- Prohibit sponsorships, donations, etc. between *actual* bidders/vendors and *actual* applicants during pendency of an E-rate RFP or application for E-rate support.

Verizon proposes an alternative approach that would enable indirect philanthropy through third party foundations. Verizon's recommendations include:

- First, the Commission should clarify that it is not a violation of the gift rules for a service provider to undertake a short-term market or technology trial with schools or libraries that may involve free or discounted pricing…
- Second, the Commission should ensure that schools and libraries may take advantage of private philanthropy by adopting a bright line rule allowing charitable donations as long as they are not contingent on the

purchase of E-Rate supported services and are consistent with a reasonable maximum donation." (Verizon, 22-23)

While MTA's recommendations would permit charitable activities by telecom providers or other entities that *potentially* might be associated with E-rate activity, MTA does not object to Verizon's recommendations.

Conclusion

MTA commends the Commission for exploring ways to modernize the Schools and Libraries Program to facilitate the infusion of broadband services into our nation's schools and libraries. The E-rate can help schools and libraries accommodate the adoption of high-capacity broadband telecommunications services—and the myriad benefits broadband services bring—into the classroom and community reading room.

E-rate support should not fund expenditures that are not necessary, may duplicate investment, waste resources, compete against or cannibalize other programs, or otherwise divert funds from the program's primary mission to promote *affordability* of broadband communications services for our nation's schools and libraries. E-rate support should not be used to build telecommunications networks or facilities, especially those that can be used for non-educational purposes.

Comments received from a broad spectrum of interested parties implore the Commission to determine the allocation of E-rate resources only after having conducted a reliable, accurate *data-driven analysis* of what schools and libraries currently receive, what they need, and what they can reasonably obtain. The Commission must *leverage existing telecommunications infrastructure*, and not cannibalize other programs designed to enhance investment in broadband services—such as the High-Cost Program. Schools and libraries should have the flexibility to determine what they need; one-size-fits-all mandates divert E-rate resources from higher priority applications.

Finally, the gift ban rules should be reformed to encourage philanthropic activity that benefits schools and libraries, and the communities they serve.

Respectfully submitted,

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List of cited comments and references.

MTA cites the following parties in its reply comments, *infra*. All comments cited were filed on September 16, 2013, *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184.

- CenturyLink
- Communications Workers of America (CWA)
- CTIA—The Wireless Association (CTIA)
- National Association of State Chief Information Officers (NASCIO)
- National Association of State Utility Consumer Advocates (NASUCA)
- National Association of Telecommunications Officers and Advisors (NATOA)
- National Cable and Telecommunications Association (NCTA)
- National Education Association (NEA)
- NTCA—The Rural Broadband Association, and Western Telecommunications Alliance (NTCA/WTA)
- State Educational Technology Directors Association (SEDTA)
- State E-Rate Coordinators Alliance (SECA)
- USTelecom
- Verizon

MTA also cites herein *ex parte* notices filed by the following parties:

- CTIA. GN Docket No. 09-51. March 26, 2010.
- MTA and the Washington Independent Telecommunications Association (WITA). CC Docket No. 02-06. May 4, 2011.
- Verizon. CC Docket No. 02-06. July 11, 2013

MTA also references guidance request letters filed by:

- Universal Service Administrative Company (USAC), August 5, 2011;
- E-Rate Central, August 22, 2011.